IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1019 of 1985

with

SPECIAL CIVIL APPLICATION No 7160 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT SD/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO

2. To be referred to the Reporter or not? NO

3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge? NO

PATEL KODARBHAI MAKNABHAI

Versus

DEPUTY COLLECTOR

Appearance:

1. Special Civil Application No. 1019 of 1985

MR BN PATEL for Petitioners

MS PS PARMAR ADDL.GOVERNMENT PLEADER for Respondent No. 1, 3

MR MI HAVA for Respondent No. 2

2. Special Civil ApplicationNo 7160 of 1985

MR BN PATEL for Petitioners

MS PS PARMAR ADDL.GOVERNMENT PLEADER for Respondent No. 1, 3

MR MI HAVA for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT
Date of decision: 22/10/96

ORAL JUDGEMENT

The petitioners in both the petitions pray for appropriate writ, order or direction to the respondents directing them to allot suitable agricultural lands under the rehabilitation benefits being extended to those whose lands have been acquired for Dharoi Project.

2. In short, the facts giving rise to both the petitions may in brief be stated. The petitioners belong to village Champalpur situate in Khed Brahma Taluka of Sabarkantha District. They were the owners of the agricultural lands and their livelihood was solely dependent upon the agricultural products. For the prosperity of the State of Gujarat and to have more and more agricultural products, the Government decided to construct the Dharoi Dam so as to irrigate the agricultural lands. For that purpose, the lands were required to be acquired. Undergoing all necessary formalities under the Land Acquisition Act, the agricultural lands belonging to the present petitioners came to be acquired. As they had become landless, the Government also adopted the policy to provide another lands in lieu of the land acquired so that they can maintain themselves and may not have to starve or face several other difficulties for their survival. As per the policy adopted, the Government, of course on implementation of the above said policy, provided the lands to several persons but unfortunately, the petitioners were not allotted with the lands in lieu of the lands they had lost because of the acquisition. They represented for getting the lands before the concerned authorities but their attempts went for nothing. As no option was left, they are constrained to file these two petitions for appropriate reliefs and have the agricultural lands under that rehabilitation policy.

3. At the time of hearing, in both these petitions, the issues that arise for determination being common, with a view to avoid duplication of work, hardships to the parties, unnecessary consumption of time and conflicting judgments, I preferred to hear both petitions together and dispose the same of by a common judgment. Accordingly both the petitions are heard and by this common judgment, both the petitions shall stand disposed of.

4. The petitioners, in this case, simply claim the

land in lieu of their lands acquired, under rehabilitation scheme which has been adopted by the Government, the copy of which is produced at Annexure A, but on behalf of the respondents, it has been assailed pointing the decision of the Supreme Court rendered in the case of New Reviera Cooperative Housing Society and another Versus Special Land Acquisition Officer and others, (1996) 1 SCC 731 laying down that it is not obligatory on the part of the State to provide alternative site after the property is acquired under the Land Acquisition Act, and so the claim of the petitioners can not be countenanced.

5. No doubt, as per the decision of the Supreme Court cited, the person losing the property because of the acquisition under Land Acquisition Act, cannot by way of right claim alternative site not even under the right to livelihood or shelter or dignity of person, but in that decision, it is made clear that if the State comes forward with the proposal to provide alternative site, certainly, the court gives effect to that proposal and appropriate direction in that behalf can be issued. It is however made clear that such proposal cannot be extended as condition in every case of acquisition of the land that the owner must be given alternative site, flat or land. What, therefore, becomes clear is that ordinarily, the person losing the property under the Land Acquisition Act, cannot by way of right claim to have another land or flat in lieu of the land lost owing to acquisition, but if the State adopts a particular policy to provide alternative site or flat, the State then cannot renege on the policy adopted. The State has then to implement the policy sincerely. If the State is aversive to implemention of the policy, it is open to the concerned person to challenge the inaction or reluctance of the State and claim the benefit under that policy. The State while acquiring lands assured to provide alternative site and adopted rehabilitation policy in that regard which is not in dispute. The contention advanced on behalf of the respondents, therefore, fails.

6. After the lands were acquired and dam was constructed, the Government, in pursuant to the policy adopted, granted 4,000 Acres of lands in lieu of the lands lost to many of the persons but unfortunately, the petitioner could not get alternative site for one or another reason, about which no satisfactory explanation is given, and that smacks of discriminatory treatment. It is the cardinal principle of law that all the persons similarly situated should be treated equally but that principle has been without any just cause, given a go by.

When that is so in view of the above referred decision of the Apex Court, appropriate direction to give effect to the policy is required to be issued.

7. An unproductive attempt is made by drawing my attention to the Government Resolution at Annexure - B modifying the policy adopted vide Annexure - A. In the year 1975, it was resolved by the State that the persons affected owing to acquisition of their lands, would be given Galpat land by the Government i.e. the land which is submerged as and when the water is flowing into the reservoir, and the Government was ready to give Galpat land to the petitioners, but the petitioners were not ready to accept the same, and therefore, the Government cannot be blamed for not implementing the policy. The contention is misconceived. In the Government Resolution produced at Annexure B, it is made clear that the Galpat land is to be allotted only when the persons losing the land under acquisition waives his rehabilitation benefits, extended under the scheme at Annexure A. For allotment of Galpat land, waiver of the benefit under the main scheme is the condition precedent. There is nothing on record going to show that the petitioners waived their rehabilitation right and preferred to have Galpat land. Time was granted to the State for production of necessary records, if at all it was having to show that the petitioners opted for Galpat land waiving their benefit under the scheme. Till today, when no such record is produced, it can be assumed that the petitioners have not waived their benefit to have the land under the scheme or policy and their say that they have never opted for Galpat land can be accepted. When that is so, it is not open to the State to submit that though the Galpat lands were being offered, the petitioners refused to accept the same, and thereby eschew it's obligation.

8. It is also the submission of the respondents that for want of land on hand, it was not possible to allot the land in time, but as and when the land would be available, certainly the case of the petitioners would favourably be considered. Refuting the submission, Mr. B.N.Patel, learned advocate for the petitioners informed the court that during pendency of these petitions, in the year 1993, the petitioner nos. 1,2,3 and 5 in Special Civil Application No. 1019 of 1985 have been allotted with the lands from that very Taluka; the respondents were craftily bilking from their obligation under the policy and shoving the petitioners off their benefits.

9. Several years have rolled by since acquisition

and different development schemes and projects have come into being. If there be any problem in allotting the land, within the taluka, the respondent can grant lands from the adjoining Talukas, but of course at the shortest possible distance, so as to enable the petitioners to make best use of the lands. The petitioners' learned advocate fairly submits that even after sincere attempts, the respondents cannot provide, the petitioners would appreciate their inability and would accept the land in any of the adjoining Talukas.

10. It is necessary to note that the leaned advocate for the petitioners does not press for the relief vide Para 10(B) in both the petitions, because by lapse of time, the same has become redundant.

11. For the aforesaid reasons, both the petitions are partly allowed. The respondents in both the petitions are directed to grant alternative site (land) as per the policy adopted, to the petitioners possibly from the lands in the Khed Brahma Taluka; and if that is not possible from the local limits of any of the adjoining Talukas at the shortest possible distance within the period of six months from today. The respondents shall pay costs of both the petitions to the petitioners which are quantified at Rs.500/- qua each of the petitions.. Rule is made absolute to the aforesaid extent.
